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From:

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To:

Cc:

Subject: Application of Section 6675 Penalty

This e-mail responds to your request for Chief Counsel Advice on whether or not the Service can apply the penalty under I.R.C. § 6675 to excessive or false claims for fuel tax credit on an income tax return. Because our answer is no, we do not address several related issues, raised in your memorandum, which would arise only if the penalty applied.

I. Section 6675 Penalty

Sections 6420, 6421 and 6427 allow for payments to eligible taxpayers. (See §§ 6420(a), 6421(a), 6427(a).) Payment generally is limited to (1) the United States or an agency or instrumentality thereof, or a state or political subdivision or agency or instrumentality thereof, (2) an organization exempt from tax under section 501(a), or (3) the taxpayers described in paragraph (2) of § 6421(d), and paragraphs (2), (3) and (4) of § 6427(i). Sections 6420, 6421 and 6427 direct taxpayers subject to income tax to § 34, for allowance of a credit against income tax. (See §§ 6420(g), 6421(i), 6427(k).) Section 34 states that, generally, there shall be allowed as a credit against the tax imposed by Subtitle A (Income Taxes) an amount equal to the sum of the amount payable to the taxpayer under §§ 6420, 6421, or 6427.

Under § 6675, if a claim is made under § 6420 (relating to gasoline used on farms), § 6421 (relating to gasoline used for certain nonhighway purposes or by local transit systems), or § 6427 (relating to fuels not used for taxable purposes) for an excessive amount, unless it is shown that the excessive claim is due to reasonable cause, the taxpayer who made the claim will be liable for the greater of (1) two times the excessive amount, or (2) \$10.

When a taxpayer makes an excessive or false claim for fuel tax credit on an income tax return, the taxpayer makes the claim under § 34. The taxpayer does not make the claim for a fuel tax credit against income tax under §§ 6420, 6421, or 6427. Thus, the Service can not apply the § 6675 penalty to such claims. See also Rev. Rul. 79-298, 1979-2 C.B. 5, which holds that the civil penalty under § 6675 of the Code for excessive

excise tax claims filed does not apply to an excessive credit taken on an income tax return.

Please let us know if you have any further questions.